

**THIS DECISION HAS BEEN APPEALED. THE FOLLOWING
IS THE RELATED SOAH DECISION NUMBER:**

SOAH DOCKET NO. 453-05-4486.M5

MDR Tracking Number: M5-05-1274-01

Under the provisions of Section 413.031 of the Texas Workers' Compensation Act, Title 5, Subtitle A of the Texas Labor Code, effective June 17, 2001 and Commission Rule 133.305 titled Medical Dispute Resolution - General and 133.308 titled Medical Dispute Resolution by Independent Review Organizations, the Medical Review Division assigned an IRO to conduct a review of the disputed medical necessity issues between the requestor and the respondent. The dispute was received on 10-19-04.

The Medical Review Division has reviewed the enclosed IRO decision and determined that **the requestor did not prevail** on the issues of medical necessity. The IRO agrees with the previous adverse determination that the aquatic therapy, gait training, neuromuscular re-education, and therapeutic exercises were not medically necessary. Therefore, the requestor is not entitled to reimbursement of the IRO fee.

Based on review of the disputed issues within the request, the Medical Review Division has determined that medical necessity was the only issue involved in this medical dispute. As the services listed above were not found to be medically necessary, reimbursement for dates of service from 4-19-04 to 7-2-04 is denied and the Medical Review Division declines to issue an Order in this dispute.

This Decision is hereby issued this 11th day of February 2005.

Dee Z. Torres
Medical Dispute Resolution Officer
Medical Review Division

DZT/dzt

Enclosure: IRO Decision



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NOTICE OF INDEPENDENT REVIEW DECISION

Date: February 7, 2005

To The Attention Of: TWCC
7551 Metro Center Drive, Suite 100, MS-48
Austin, TX 78744-16091

RE: Injured Worker:**MDR Tracking #:** M5-05-1274-01**IRO Certificate #:** 5242

Forté has been certified by the Texas Department of Insurance (TDI) as an independent review organization (IRO). The Texas Workers' Compensation Commission (TWCC) has assigned the above referenced case to Forté for independent review in accordance with TWCC Rule §133.308 which allows for medical dispute resolution by an IRO.

Forté has performed an independent review of the proposed care to determine if the adverse determination was appropriate. In performing this review, relevant medical records, any documents utilized by the parties referenced above in making the adverse determination and any documentation and written information submitted in support of the appeal was reviewed.

The independent review was performed by a Chiropractic reviewer who has an ADL certification. The reviewer has signed a certification statement stating that no known conflicts of interest exist between him or her and any of the treating physicians or providers or any of the physicians or providers who reviewed the case for a determination prior to the referral to for independent review. In addition, the reviewer has certified that the review was performed without bias for or against any party to this case.

Submitted by Requester:

Much of the information provided by the requester was also provided by the respondent.

- Multiple orthopedic pain management follow ups from Dr. Mohamed dated 10/25/04, 10/7/04, 9/8/04, 8/18/04 and 7/28/04
- 3/22/04 note from Dr. Wilcox
- Certificate of medical necessity for use of a cane dated 5/14/04
- Hospital instructions dated 2/28/04 regarding the claimant's deep contusion and sprained ankle
- MRI report of the left ankle dated 3/11/04
- Two FCE reports (mentioned below) of 6/14/04 and 4/26/04
- Initial psychosocial interview of 6/21/04
- Request for a work hardening program letter dated 6/28/04 and an appeal letter for a work hardening program dated 7/5/04, both from Dr. Alexander
- Patient referral for the claimant to see Dr. Wilcox for this left ankle crush injury
- Daily chiropractic notes dated 4/19/04 through 5/21/04
- 3/8/04 initial evaluation report and examination findings from Dr. Alexander
- 11/17/04 visit with Dr. Clemence
- Note from the claimant's attorney regarding his attempt to acquire Social Security disability benefits dated 10/26/04
- Multiple daily chiropractic rehabilitation notes from 4/12/04 through 12/10/04
- Physical therapy exercise flow sheets from 5/24/04 through 7/13/04

Submitted by Respondent:

- Several peer review reports from Dr. Tonn, M.D. and Dr. Osborne, M.D. dated 11/3/04, 7/24/04 and 7/29/04
- Employer's first report of injury or illness that was not dated
- TWCC-21 report dated 2/25/04
- Associate statement which was essentially a patient information form from the claimant
- Workers' compensation request for medical care form dated 2/23/04
- TWCC-73 report from Dr. Baxter, M.D.
- Several TWCC-73 reports from Dr. Alexander, D.C., treating chiropractor, dated 3/8/04, 4/8/04, 5/8/04, 6/8/04, 7/8/04, 8/10/04, and 9/8/04
- TWCC-73 report from Dr. Clemence, orthopedist, dated 11/17/04
- TWCC-73 report from Dr. Wilcox, M.D. dated 3/22/04
- Usual medical dispute resolution request/response information as well as the usual IRO information including the table of disputed services
- MRI request from Dr. Alexander for a left ankle MRI
- Letter of medical necessity that was not dated from Dr. Mohamed, M.D. recommending Celebrex and a compounding agent
- Several notations from Alamo City Medical Group dated 2/23/04 and 3/1/04
- Plain film x-ray study report of 2/28/04 involving the claimant's left ankle
- Information from Northeast Methodist Hospital of San Antonio – it appears the claimant presented here on 2/28/04 due to very severe pain at the lateral malleolus
- Workers' compensation initial evaluation report and exam findings from Dr. Alexander dated 3/8/04
- Initial consultation note from Dr. Mohamed dated 3/12/04
- Referral slip from Dr. Alexander for the claimant to see Dr. Wilcox dated 3/16/04
- 3/22/04 note from Dr. Wilcox who did see the claimant on that day
- Psychological evaluation from Devine Behavioral Health
- Aquatic therapy notes for dates of service 4/12/04 through 5/21/04 for about 17 visits
- Impairment rating evaluation reports of 4/26/04 and 6/14/04
- Initial psychological interview report of 6/21/04 prior to entrance into work hardening
- 7/14/04 note regarding an appeal for work hardening from Dr. Alexander
- Several orthopedic follow ups from Dr. Mohamed dated 7/28/04, 8/18/04, 9/8/04, 10/7/04, 10/25/04 and 11/15/04
- 11/17/04 note from Dr. Clemence, who made notes that the claimant was to be seen on 12/13/04 and 12/15/04; however, the claimant either had a family emergency or was out of town on those dates
- Letter of clarification of peer review from Dr. Alexander dated 8/7/04
- Daily chiropractic treatment notes involving the therapy the claimant received from 5/24/04 through 7/13/04
- Several physical therapy exercise flow sheets dated 5/24/04 through 7/13/04
- Several chiropractic daily notes from 3/8/04 through 5/21/04 which represented 27 visits

Clinical History

According to the documentation submitted for review, the claimant was operating a rocket forklift type of equipment and this reportedly struck the lateral side of the left ankle and caused injury. The claimant did not initially report it because he felt it was no big deal, at least this was what the claimant stated. As of 2/28/04, however, the claimant started to develop severe pain in the left ankle and presented to a local emergency room. He has also seen Dr. Baxter on 2/23/04 and 3/1/04 for follow up as well. Dr. Baxter noted the presence of no external injury and felt the claimant had perhaps a sprain/strain injury and contusion. The claimant began chiropractic care on or about 3/8/04 and has undergone extensive amounts of treatment including aquatics, gait training, neuromuscular re-education and other exercises. The claimant has followed up on several occasions with Dr. Mohamed. The claimant has seen Dr. Wilcox and Dr. Clemence. The claimant still appears to be having difficulty. An MRI of the claimant's left ankle was carefully reviewed. This revealed a small tibiotalar joint effusion and evidence of tenosynovitis of the flexor hallucis longus tendon. There was some fluid signal intensity noted along the medial aspect of the lower ankle consistent with a ganglion cyst. There was some signal abnormality at the superior medial aspect of the talar dome which was suspicious for osteochondral injury; however, there is no osteochondral defect identified. There was a suggestion of probable os trigonum representing an accessory ossification center that was posterior to the talus.

Requested Service(s)

97113 aquatic therapy, 97116 gait training, 97112 neuromuscular re-education, 97110 therapeutic exercises for dates of service 4/19/04 to 7/2/04.

Decision

I agree with the carrier and find that the services in dispute were not medically necessary.

Rationale/Basis for Decision

The chiropractor continually documented spasms, tenderness and decreased range of motion. These were all vague statements and findings. The documentation from the chiropractor suggests that he was treating a sprain/strain injury. The amount, type and extent of treatment rendered is not justified for a simple ankle sprain/strain injury. It was also quite evident from the MRI study relatively early in the treatment phase that the chiropractic findings did not fully encompass the extent of this claimant's particular condition. The chiropractor also stated that a pallet full of material, which in this case was either sodas or orange juice depending on which report one reads, fell or crushed the claimant's ankle when the rest of the documentation does not support this mechanism of injury. The mechanism of injury has consistently been that the pallet jack ran into the claimant's left lateral ankle. It should have been quite evident that this claimant had a bigger problem than a simple sprain/strain injury. The claimant's lack of ability to weight bear, stand or walk for very long, especially beyond 6-8 weeks post injury, was an indication that further referral was indicated. Although referral did take place, the treatment rendered was unnecessary. The MRI findings of 3/11/04 should have alerted all parties to the fact that this was a bigger problem. Given the claimant's sharp pains and lack of improvement with traditional physical therapy, all parties should have been alerted to the fact that this was more than a

sprain/strain injury. Also, osteochondral injuries come about due to direct axial trauma directed down through the lower leg to the talar dome. These types of injuries also occur with recurrent ankle sprain/strain injuries and other repetitive trauma to the ankle. Dr. Mohamed documented that this claimant fell from a height of 3 stories some time in the past and this resulted in his prior knee surgery and femur fracture that took place in the early 1990's. Certainly this was a contributing factor to this pre-existing ankle condition. The claimant is also noted to be obese and this would also cause multiple micro tearing to the osteochondral surface of the talar dome. It should be noted that the aquatic notes indicated that the aquatic therapy actually increased the pain on literally every visit except for the first 2 visits. The FCEs of April and June 2004 showed no significant changes in the claimant's condition. Dr. Alexander stated that the claimant progressed from using 2 crutches to using a cane and he felt that this justified the treatment. The same results could have been accomplished via a home based exercise program. It was quite clear that this claimant could not weight bear and further orthopedic management was indicated. Aquatic therapy actually increased this claimant's pain and this should have raised a red flag so to speak in the management of the claimant. The MRI results can certainly be construed as pre-existing. It is my opinion based on a literature review, internet search and various other articles from the orthopedic establishment that this claimant's current condition resulted from the so called last straw which occurred as a result of the pallet jack striking the claimant on 2/20/04. This claimant has had multiple traumatic injury to his ankle and this was finally the last straw so to speak. Treatment also consisted of treadmill work, stair work and bicycle work which is something the claimant could have done at home. I certainly understand that the claimant could not tolerate land based activities; however, some 6-8 weeks post injury when the aquatic therapy was begun, there should have been a red flag raised in the mind of his treating physicians as to why this claimant was still having such difficulty especially given the MRI findings of 3/11/04. For physical therapy to be reasonable and medically necessary, it must be reasonably anticipated that it will be effective. It was clear that early on the usual physical therapy was not being effective. The record is clear that the conservative care has not been effective even through December 2004 at which time surgery and injections were being discussed. The need for aquatic therapy for an ankle injury is questionable anyway. A blunt trauma injury to the lateral side of the ankle can set off a whole myriad of ankle problems in a person with prior ankle problems. Whether he wanted to admit it or not, this claimant did have prior ankle problems which were perhaps asymptomatic at the time. There was actually no documentation to suggest a severe sprain/strain injury. The documentation from Dr. Baxter actually showed no signs of external injury to the ankle way back in the beginning of the injury. In fact he stated "no visual signs of injury" when referring to the ankle in February 2004. It should also be noted that the initial x-rays of 2/28/04 revealed "no evidence of soft tissue injury or swelling". This claimant did not suffer the typical sprain/strain injury and yet the chiropractor was treating the claimant for a sprain/strain injury. In fact, the claimant did not initially report the injury because he felt it was no big deal. This is an additional indication for suspicion of a talar dome injury. In situations of ankle sprain/strain there is usually significant and immediate swelling and pain, but this did not occur. There was no discoloration of the soft tissues associated with ankle sprain/strains and if the claimant had suffered a simple sprain/strain, then he would not have needed aquatic therapy anyway. The inability to ambulate and weight bear, and the lack of the typical sprain/strain findings as well as taking the MRI findings into consideration this should have alerted the treating doctors, in this case Dr. Alexander and Dr. Mohamed, that there was something more sinister going on. Some initial conservative treatment would have been fine; however, as of the beginning of the disputed dates of service further physical therapy was not indicated at that point

in that orthopedic opinion was needed. Now, as of December 2004, the claimant is still being considered for injections and surgery. The attitude seemed to be that a lot of physical therapy would be thrown at this claimant in hopes that something good would occur and the initial chiropractic daily notes through 5/21/04 were extremely vague and I really saw no evidence of significant improvement or such improvement that could not have been accomplished just as well on a home based exercise program.

In accordance with Commission Rule 102.4(h), I hereby verify that a copy of this Independent Review Organization (IRO) Decision was sent to TWCC via facsimile or U.S. Postal Service from the office of the IRO on this 7th day of February 2005.

Signature of IRO Employee:

Printed Name of IRO Employee: Denise Schroeder